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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/070,933	07/26/2002	Kari Seppala	06267.0086	4688

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WASHINGTON, DC 20005

EXAMINER

FLYNN, AMANDA R

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 12/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/070,933

Applicant(s)

SEPPALA, KARI

Examiner

Amanda R. Flynn

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 08 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 9-14 is/are rejected.
- 7) ☒ Claim(s) 5-8 and 15 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4, 9-11 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent Number 5,447,151 to Bruna et al.

Regarding claims 1, 3, 9-11 and 14, Bruna et al. disclose a powder inhaler comprising a powder container (202), an air channel (84) through which air can be drawn via a mouthpiece (3), and a metering member (81). The metering member extends into the interior of the powder container and is in the form of an axially movable rod, equipped with a dosing recess (204). The metering member is movable between a filling position in which the dosing recess can be filled with powder, and an inhalation position, in which the dosing recess can be brought directly into the air channel, wherein a stream of inhaled air can discharge a dose of powder directly from the dosing recess. Bruna et al. show actuating means (2) for displacement of the metering member between the filling and the inhalation position. The actuating means include a depressible device cover to which the metering rod is connected. Bruna et al. also disclose a closure element (85) adapted to plug the air channel around the metering member in a substantially water-proof manner, so as to protect the air channel around the metering member from exhalation moisture when the metering member is in the filling position, and to open the air channel when the metering member is in the inhalation position. See column 14, lines 18-35. The shoulder that

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abuts the closure member (85) constitutes a "first sealing means" to secure the substantially waterproof plugging of the air channel by the closure element.

Regarding claims 2 and 4, and as seen in the Figures, the actuating means (2) communicates or is connected with the closure element (85), via the mechanical linkage of the pusher (2).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bruna et al. in view of WO 90/02576 to Blower et al.

Bruna et al. disclose a powder inhaler comprising an inhaler body. Bruna et al. do not specify a second sealing means for providing substantially waterproof sealing between the actuating means and the inhaler body, while allowing movement of the actuating means in relation to the inhaler body.

Blower et al. disclose an inhalation device as shown in Figure 4, comprising sealing means (19) that provide a substantially waterproof seal between the inhaler body and the actuating means (15), to protect the device from the moisture of a user's breath.

It would have been obvious to one skilled in the art at the time the invention was made to have provided the device as disclosed by Bruna et al. with a second sealing means between the

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actuator (2) and the inhaler body (1), as taught by Blower et al., to protect the device from the moisture in a user's breath.

Although Blower et al. do not expressly disclose that the seal (19) comprises corrugated walls, at the time the invention was made, it would have been obvious to one skilled in the art to modify the inhaler disclosed by Bruna et al. in view of Blower et al., to include a seal comprising corrugated walls. Applicant has not disclosed that the corrugated walls provide an advantage over an elastic seal, is used for a particular purpose or solves a stated problem. One with ordinary skill in the art would have expected Applicant's invention to perform equally well with an elastic seal as taught by Blower et al., since such a seal is equally capable of allowing relative movement between the inhaler body and the actuating means, while providing a substantially waterproof seal.

### ***Response to Arguments***

5. Applicant's arguments still pertinent to the new, clarified grounds of rejection are treated herein.

On page 3 of the remarks, Applicant argues that the one-way flap valve of Bruna et al. is not disclosed as effectively protecting the air channel from moisture. The Examiner disagrees with this position. Bruna et al. show a valve (85) that is mounted in line with the air channel and abuts against a shoulder. Bruna et al. state that the valve is used to prevent a user's breath from entering the air channel, and disrupting the dose. The limitation of Applicant's claim in question solely requires a closure element that plugs the air channel in a substantially waterproof manner to protect the air channel from moisture. It is the Examiner's position that the one-way valve of

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Bruna et al. plugs the air channel in an at least substantially waterproof manner, due to the sealing created by the valve (85) and the shoulder, and optionally aided by a spring.

Also on page 3 of the remarks, Applicant argues that the one-way flap valve of Brunna et al. is not disclosed as necessarily plugging the channel when the metering member is in the filling position and opening the channel when the metering member is in the inhalation position. The device of Brunna et al. is capable of plugging the channel when the metering member is in the filling position as shown in Figure 9. The device of Brunna et al. is further capable of opening the channel when the metering member is in the inhalation position, if a user's inhales with the metering member in the inhalation position, as is intended by the use of the device. The claim does not require that the closure member necessarily perform these requirements to function.

On page 4 of the remarks Applicant argues that the one-way valve of Brunna et al. is undesirable for various reasons. This is not found to be persuasive.

***Allowable Subject Matter***

6. Claims 5-8 and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amanda R. Flynn whose telephone number is 703-306-4056. The examiner can normally be reached on Monday-Thursday, 8:30 - 6:00 and alternate Fridays.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry A. Bennett can be reached on 703-308-0101. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

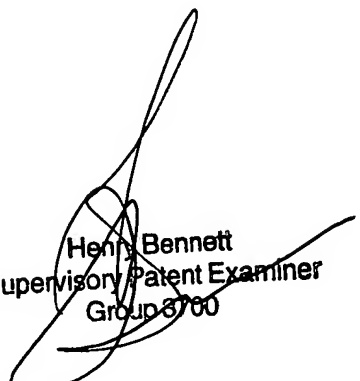


Amanda R. Flynn

Examiner

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ALF  
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Henry A. Bennett  
Supervisory Patent Examiner  
Group 8700